

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MJD INDUSTRIES, LLC, d/b/a ARES TOOL, a Washington limited liability company, Plaintiff, v. KYTSA ENTERPRISE, CO. LTD. d/b/a OZARK, a Taiwanese company, Defendant.	CASE NO. C20-0069-JCC MINUTE ORDER
---	---

The following Minute Order is made by direction of the Court, the Honorable John C. Coughenour, United States District Judge:

This matter comes before the Court on Defendant’s motion to dismiss (Dkt. No. 19), Plaintiff’s response (Dkt. No. 24), and Defendant’s reply (Dkt. No. 27). Defendant asks the Court to dismiss this action because Plaintiff’s claims should have been asserted as compulsory counterclaims in an earlier-filed California state court action and because Plaintiff failed to properly serve Defendant. (*See generally* Dkt. No. 19.) Plaintiff argues that Defendant’s motion should be denied because the Clerk previously entered default and Defendant has not formally moved to set aside the entry of default. (*See generally* Dkt. No. 24.) In effect, however, Defendant seeks to set aside the entry of default in its motion to dismiss, and courts generally “show[] considerable leniency in treating other procedural steps as equivalent to a motion [to set

1 aside entry of default.” 10A Fed. Prac. & Proc. Civ. § 2692 (4th ed.) (citing cases); *see also A.F.*
2 *Holdings LLC v. Skoda*, 2013 WL 460431, slip op. at 2 (E.D. Cal. 2013) (“While defendant did
3 not formally make a motion to set aside the default, his opposition to the motion to strike the
4 answer has similar effect.”). Following that approach, the Court construes Defendant’s motion
5 (Dkt. No. 19) as a motion to set aside the entry of default under Federal Rule of Civil Procedure
6 55(c) and dismiss under Rule 12(b)(5) and California Code of Civil Procedure § 426.30.

7 The Court DIRECTS the Clerk to re-note the motion (Dkt. No. 19) for January 4, 2021.
8 Plaintiff may file a supplemental response brief by December 18, 2020, and Defendant may file a
9 supplemental reply brief by January 4, 2021.

10 DATED this 3rd day of December 2020.

11 William M. McCool
12 Clerk of Court

13 s/Paula McNabb
14 Deputy Clerk